

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**UNITED CENTRAL BANK,
Plaintiff,**

v.

Case No. 11-C-0693

**KMWC 845, LLC, a Wisconsin limited
liability company, et al.,
Defendants.**

ORDER

The Seventh Circuit remanded this matter to this court on September 21, 2015.

Before the notice of appeal was filed, two motions were filed in this court that remain pending. The first is the plaintiff's motion for attorneys' fees and costs in the amount of \$371,267.04, which it filed pursuant to Federal Rule of Civil Procedure 54(d). No defendant filed a brief in opposition to the motion,¹ and therefore I consider the motion unopposed and will grant it for that reason. See Civil L.R. 7(d) (E.D. Wis. 2010) ("Failure to file a memorandum in opposition to a motion is sufficient cause for the Court to grant the motion.").

The second motion, filed by the defendants who are actively defending this suit, is a request for entry of judgment on Count I of the complaint in accordance with my orders relating to that count. Such orders were the subject of the recent appeal. Because a

¹In an order dated April 7, 2014, I stated that the defendants' time to respond to the motion for fees and costs would begin to run on the date that the plaintiff filed certain supplemental materials in support of the motion. The plaintiff filed the supplemental materials on April 21 and 22, 2014. Under Civil Local Rule 7(b), the defendants had 21 days from April 22, 2014, to file their response. To date, no response has been filed.

“judgment” is “any order from which an appeal lies,” see Fed. R. Civ. P. 54(a), entering a separate judgment at this point would be redundant—the appeal has already occurred, and the orders under review constituted the “judgment.” Moreover, the defendants’ proposed judgment includes affirmative relief—it is essentially a declaratory judgment in the defendants’ favor. However, the defendants never filed a counterclaim for declaratory relief, and the court never adjudicated a claim for such relief. With respect to Count I of the complaint, all that I determined was that the plaintiff’s claim must be dismissed with prejudice. Accordingly, the defendants’ motion for judgment on Count I will be denied.

Finally, I note that I have already entered judgment on the remaining counts of the complaint, see ECF No. 165, and that it does not appear that further proceedings in the district court are required. Therefore, the Clerk of Court will be directed to close this case for administrative purposes.

CONCLUSION

For the reasons stated, **IT IS ORDERED** that the plaintiff’s motion for attorneys’ fees and costs (ECF No. 167) is **GRANTED** in the amount of \$371,267.04.

IT IS FURTHER ORDERED that the defendants’ motion for judgment on Count I (ECF No. 181) is **DENIED**.

FINALLY, IT IS ORDERED that the clerk of court shall close this file for administrative purposes.

Dated at Milwaukee, Wisconsin, this 22nd day of September, 2015.

s/ Lynn Adelman

LYNN ADELMAN
District Judge